

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File Nos. EB-07-IH-5331
)	EB-08-IH-1547
PONTIFICAL CATHOLIC UNIVERSITY OF)	
PUERTO RICO SERVICE ASSOCIATION,)	NAL Account No. 200932080050
INC.)	
)	Facility ID No. 9351
Licensee of Noncommercial Educational Station)	
WPUC-FM, Ponce, Puerto Rico)	FRN No. 0001731314
)	
)	

ORDER

Adopted: July 31, 2009**Released: August 3, 2009**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and Pontifical Catholic University of Puerto Rico Service Association, Inc. ("Licensee"). The Consent Decree terminates an investigation by the Bureau against the Licensee for possible violations of Section 399B of the Communications Act of 1934, as amended,¹ and Section 73.503(d) of the Commission's Rules² regarding the broadcast by the Licensee of underwriting acknowledgments over Station WPUC-FM, Ponce, Puerto Rico (the "Station").

2. The Bureau and the Licensee have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether the Licensee possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,³ and Sections 0.111 and 0.311 of the Commission's Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

³ See 47 U.S.C. § 154(i).

⁴ See 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that the third-party complaints and allegations against the Station and/or the Licensee before the Enforcement Bureau related to the above-captioned investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent to Pontifical Catholic University of Puerto Rico Service Association, Inc., by first-class, certified mail, return receipt requested, to Charles R. Naftalin, Esq., Rosalind Allen, Esq., Frances G. Faigenblat, Esq., and Leighton T. Brown, II, Esq. Holland & Knight LLP, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau ("Bureau") and Pontifical Catholic University of Puerto Rico Service Association, Inc. ("Licensee"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's above-referred investigation into whether Licensee violated Section 399B of the Communications Act of 1934, as amended,¹ and Section 73.503(d) of the Commission's rules,² in connection with the broadcast by Licensee of underwriting acknowledgments over its noncommercial educational FM radio station, WPUC-FM, Ponce, Puerto Rico.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (c) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) "Complaints" mean all third-party complaints alleging violations of the Commission's Underwriting Laws, including those dated May 16, 2008 and an undated complaint forwarded through the Bureau's August 14, 2008 Letter of Inquiry that may have been received by, or is in the possession of, the Commission, and all related information or allegations.
 - (e) "Compliance Plan" means the program described in this Consent Decree at paragraph 8.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

- (g) “Investigation” means the investigation concerning the Complaints commenced by the Bureau’s October 22, 2007 and August 14, 2008 Letters of Inquiry³ regarding whether Licensee violated the Commission’s Underwriting Laws in connection with its operation of the Station during May and July of 2007 as well as between October 27, 2007 and November 25, 2007.
- (h) “Licensee” means the Pontifical Catholic University Service Association and its predecessors-in-interest and successors-in-interest as licensee of the Station.
- (i) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (j) “Parties” mean Licensee and the Bureau.
- (k) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “Station” means noncommercial educational FM radio station WPUC-FM, Ponce, Puerto Rico (Facility ID No. 9351).
- (m) “Underwriting Laws” mean Section 399B of the Communications Act of 1934, 47 U.S.C. § 399b, and Section 73.503(d) of the Commission’s Rules, 47 C.F.R. § 73.503(d).

II. BACKGROUND

2. Pursuant to Section 399b(a) of the Act⁴ and Section 73.503(d) of the Rules, advertisements are defined as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.⁵ Section 399b(b)(2) specifically provides that noncommercial educational stations may not broadcast advertisements.⁶ Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors’ products, services, or businesses.⁷ Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.⁸ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter and is consistent with the Commission’s Rules and decisions establishing compliant underwriting

³ See Letter from Benigno E. Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Licensee, dated October 22, 2007 (“October 22th LOP”); Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Licensee, dated August 14, 2008 (“August 14th LOP”).

⁴ See 47 U.S.C. § 399b.

⁵ See 47 U.S.C. § 399b(a).

⁶ See 47 U.S.C. § 399b(b)(2).

⁷ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), republished, 7 FCC Rcd 827 (1992) (“Public Notice”).

⁸ See *Id.*

announcements. Consequently, the Commission expects licensees to exercise reasonable, “good faith” judgment in this area, and affords some latitude to the judgments of licensees who do so.⁹

3. On October 22, 2007, the Bureau inquired about a complaint alleging that Licensee had aired advertisements in violation of the Underwriting Laws during sporting events on May 28, 2007, July 2, 2007 and July 28, 2007. Licensee responded on November 21, 2007, informing the Bureau that the sporting events aired on May 28, 2007 and July 2, 2007. Licensee also stated that it had advertisements that may have aired on those two dates. On August 14, 2008, the Bureau inquired about a complaint alleging that Licensee had aired advertisements in violation of the Underwriting Laws between October 27, 2007 and November 25, 2007. The Bureau directed Licensee to produce further information on October 27, 2008 and April 17, 2009. Licensee responded on September 29, 2008, November 26, 2008 and June 1, 2009, informing the Bureau that numerous announcements had aired between October 27, 2007, and November 25, 2007.

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order, or of the terms of this Consent Decree, shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree, and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation and dismiss the Complaints. In consideration for the termination of said Investigation and dismissal of the Complaints, Licensee agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Licensee concerning the matters that were the subject of the Investigation or the Complaints. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Licensee with respect to Licensee’s basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Licensee agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission’s Rules, and the Commission’s Orders. The Plan will include, at a minimum, the following components:

⁹ See *Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

a. Licensee will use a multi-level review procedure for underwriting content to be broadcast on the Station. In working with prospective underwriters, Licensee staff will brief potential donors on the Underwriting Laws, provide them with the current Licensee Underwriting Guidelines, and work with them to fashion acceptable language.

b. Licensee has prepared, with the assistance of legal counsel, an employee manual on allowed and prohibited announcements, will train employees and student interns on acceptable underwriting content that complies with the Underwriting Laws, and has placed a moratorium on accepting any new contracts with sports organizations for the broadcast of such organizations' games.

c. Licensee will make good faith efforts, with respect to independently produced programming broadcast on the Station, to obtain from the distributors of such programming the copy for underwriting announcements contained in such programming in advance of such programming's broadcast, for the purposes of independently reviewing such copy for compliance with the Underwriting Laws.

9. **Compliance Reports.** Licensee will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, twenty-four months after the Effective Date, and upon expiration of this Consent Decree, three years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Licensee, stating that the officer has personal knowledge that Licensee has established and maintained on an ongoing basis operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. Each compliance report will describe any significant difficulties Licensee has encountered during the reporting period in ensuring compliance with the Underwriting Laws, what steps it has taken to resolve those difficulties, and the success of those steps in doing so. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

10. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire three (3) years after the Effective Date.

11. **Voluntary Contribution.** Licensee agrees that it will make a voluntary contribution to the United States Treasury in the amount of Seventeen Thousand Dollars (\$17,000.00). The payment will be made in three installments, with the first payment of \$7,000 to be made within five (5) calendar days after the Effective Date of the Adopting Order, the second payment of \$5,000 to be made no later than ninety (90) calendar days of the Effective Date of the Adopting Order, and the third payment of \$5,000 to be made no later than one hundred eighty (180) calendar days of the Effective Date of the Adopting Order. Each payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payments must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the dates said payments are made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and to Anjali.Singh@fcc.gov.

12. **Waivers.** Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Licensee does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Licensee does not admit or deny noncompliance, violation or liability for violating the Act, the Commission's Rules or Orders in connection with the matters that are the subject of this Consent Decree.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Julio E. Feliú Ramirez
Executive Director
Pontifical Catholic University of
Puerto Rico Service Association, Inc.

Date